

Submission

on the

Material that Advocates Terrorist Acts

Discussion Paper

to the

Classification Review

Classification Policy Branch

Australian Attorney-General's Department

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1. Introduction

There is some uncertainty as to whether the current National Classification Code and classification guidelines provide for material which advocates terrorist acts to be refused classification. The Discussion Paper presents a proposal to amend the Code and the guidelines to ensure that this material will be refused classification.

Public submissions are due by 29 May 2007. The classification scheme is a co-operative scheme between the Commonwealth, States and Territories and any changes would need approval by the Standing Committee of Censorship Ministers.

2. Advocating terrorist acts

The community has a clear interest in ensuring that material advocating terrorist acts is not available in Australia. This requires measures to prevent the publication and sale of such material within Australia; the prohibition of importing such material and an effective means to prevent access to such material stored electronically offshore but accessible via the Internet.

2.1 Where to place the definitions

The definitions could be placed in the guidelines, but this is problematic. One of the points being raised in a current challenge to a decision of the Classification Review Board by Adultshop Pty Ltd is that the guidelines are purely advisory and that items may be classified otherwise than as required by the guidelines in order to give effect to one or other principle in the National Classification Code.

To meet this problem, without the necessity of placing the definitions in the National Classification Code it the following new section 1A could be added to the Code immediately after section 1.

Section 1 reads:

“1. Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear, and see what they want;*
- (b) minors should be protected from material likely to harm or disturb them;*
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;*
- (d) the need to take account of community concerns about:*
 - (i) depictions that condone or incite violence, particularly sexual violence; and*
 - (ii) the portrayal of persons in a demeaning manner.”*

Recommendation 1: A new section 1A should be inserted in the National Classification Code after section 1 as follows:

“1A. To avoid doubt, these principles are not to be taken to permit a publication, film or computer game to be classified other than in accordance with any guidelines determined by the Minister in accordance with Section 12 of the Classification (Films, Publications and Computer Games) Act 1995.”

3. ‘Hate’ material

It is not appropriate to conflate ‘hate’ material with material that advocates terrorist acts.

Some vilification legislation imposes unacceptable limits on free speech because the legislation lacks an adequate defence of truthfulness; it has a low threshold such as ‘inciting severe ridicule’; and lacks adequate exemptions for public discussion of controversial matters.

4. Customs Regulations

The Customs (Prohibited Imports) Regulations 1956 and Customs (Prohibited Exports) Regulations 1958 should be amended to identify material that advocates terrorist acts as prohibited imports and exports. The definitions used in the guidelines should be included in these regulations.

5. Broadcasting Services Act 1999

This Act provides for take-down orders for Internet content hosted in Australia that is or would be refused classification under the National Classification Code and guidelines.

The amendments to the Code and the guidelines will be applicable to these provisions.

However, this will not adequately protect the Australian community from material that advocates terrorist acts. Any such material hosted electronically outside Australia, but accessible through the Internet, will still be available from within Australia and may inspire terrorist acts within Australia.

It is time to take seriously the implications of a worldwide information and communication system – the Internet – for the Australian community.

Only a mandatory filtering system at either national or Internet Service Provider (ISP) level could adequately prevent people within Australia having ready access to material that advocates terrorist acts.

What is the point of prohibiting the import, publication, sale, distribution or hosting on an Australian website material that advocates terrorist acts when the same material may be readily available from offshore websites to anyone with a computer and a modem?

When the Classification Review Board recently refused classification to Dr Philip Nistchke’s Peaceful Pill Handbook, he simply made it available for download from Google Books in the US.

Advocates of terrorism are often involved in international organizations. It is quite likely that any film or publication advocating terrorist acts which is refused classification in Australia or refused entry as a prohibited import will be made available from an overseas hosted website.

Recommendation 2: That the Commonwealth Attorney General urgently request the Minister for Communications, Information Technology and the Arts to take the necessary steps for a mandatory filtering system, at either national or ISP level, which would allow the blocking of access to all offshore websites which host content advocating terrorist acts.

6. Recommendations

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Recommendation 2: That the Commonwealth Attorney General urgently request the Minister for Communications, Information Technology and the Arts to take the necessary steps for a mandatory filtering system, at either national or ISP level, which would allow the blocking of access to all offshore websites which host content advocating terrorist acts.